Supreme Court of New Zealand
Te Kōti Mana Nui

22 July 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

SOUTHERN RESPONSE EARTHQUAKE SERVICES LTD v AVONSIDE HOLDINGS LTD

(SC 118/2014) [2015] NZSC 110

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Avonside Holdings Ltd (Avonside) owned a residential rental property in Christchurch. It was insured under a policy issued by AMI Insurance Ltd (AMI). AMI's liability under the policy has been assumed by Southern Response Earthquake Services Ltd (Southern).

The property was damaged in the earthquakes of 4 September 2010 and 22 February 2011. The house is beyond economic repair. As it was entitled to do under the policy, Avonside elected to buy another house. The policy provided that the cost of the other house can be no more than "rebuilding your rental house on its present site".

The appeal before the Supreme Court concerned solely whether there should be a sum for contingencies and an allowance for certain professional fees when calculating the amount payable under the policy.

In the High Court, MacKenzie J held that there should be no allowance for contingencies on the basis that this was a notional rebuild and unexpected events will thus not occur. As to professional fees, MacKenzie J accepted that the amount allowed by Mr Farrell, for Southern, was the "appropriate estimate of the fees for items which

would be necessarily incurred in the notional rebuild". He rejected Avonside's approach, which he described as "adopting a percentage figure based on the expected professional fees for an individually designed new house".

The Court of Appeal rejected MacKenzie J's distinction between a notional and actual rebuild and held that a reasonable estimate for professional fees and contingencies should be included in the sums payable, as if the house were actually being rebuilt. The Court of Appeal preferred Avonside's approach to professional fees. It commented that this result was in any event close to Southern's approach when it had earlier prepared an actual estimate of rebuilding costs.

The Supreme Court has unanimously dismissed the appeal.

As to the inclusion of contingencies, the Court has held that the exercise that is required under the policy is to estimate the actual cost of rebuilding the house on the present site. The fact that this is a notional, rather than actual, rebuild does not mean that identified risks are irrelevant to the costing exercise. The risks involved, which Southern's witnesses accepted were present, would be relevant to estimating the cost of an actual rebuild. Thus, the Court of Appeal was correct to accept the inclusion of an allowance for contingencies.

As to the quantum of professional fees, the Court agreed with the Court of Appeal that Avonside's estimate of professional fees was preferable to that of Southern. Contrary to MacKenzie J's view, Avonside's estimate was based on the use of an architectural draftsperson and not an architect and took full account of the fact that the notional build was a rebuild on an existing site with existing plans. It was also in line with Southern's earlier estimate of professional fees.

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